IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 4233 of 2003(D)

CC.338/1998 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY
(renumbered as C.C.647/99)

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PETITIONER: ACCUSED IN CC(3RD ACCUSED IN CRIME NO.26/98)

SREEJITH, S/O. KUMARAN,
MOKERI, PANOOR, THALASSERY TALUK.

BY ADV. SRI.P.K.VIJAYAN
SRI.SELJUM P.EMMANNUEL
SRI.C.D.BINISH

RESPONDENTS: COMPLAINANT:

STATION HOUSE OFFICER,
PANOOR, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C NO. 4233 of 2003

Dated 29th day of November, 2006

ORDER

Petitioner who is the 3rd accused in crime No.26/98 of Panoor police station/C.C.No.647/99 in the court of the Addl.Chief Judicial Magistrate, Thalassery with respect to the offences under sections 143, 147, 148, 341, 323, 324 read with 149 IPC has sought for setting aside the proceedings on the ground that the rest of the accused have been acquitted after trial vide C.C.338/98. The petitioner has also produced the judgment in C.C.No.338/98. It is case of the petitioner that as evident from the judgment in C.C.No.338/98, PW-1 - the de facto complainant, did not have a definite case against any of the assailants in the crime. It is contended that in view of the evidence of the witnesses who have deposed in C.C.No.338/98, they would be precluded from giving evidence contrary to the above version. Hence, further proceedings in C.C 647/99 would be a mere exercise in futility. The case has been pending since long and the petitioner is put to much hardship.

2. I find that the contention of the petitioner as above cannot be entertained in view of the Full Bench decision of this court in **Moosa v. S.I. Of Police** (2006 (1) KLT 552(FB).

In the circumstances, the order sought for, i.e. quashing the proceedings in C.C.647/99 in which the petitioner is the accused cannot be allowed. In the result, the Crl.M.C. is dismissed.

K.R.UDAYABHANU, JUDGE.

kvm/-